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SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1980

No. 80-6397

ORIGINAL COPY

RICHARD GRAHAM,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

FURTHER SUPPLEMENTAL BRIEF OF PETITIONER IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD JUDICIAL DEPARTMENT.

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On June 1, 1981, this Court denied certiorari in Florida vs Busch, 80-1627.

In Busch vs Florida, 392 So.2d 272, the Court decided that this Court's decision in Payton applied retroactively, at least to cases pending in this Court at the time of the Payton decision.

The Florida Court rejected the "State's contention that Payton should not be given retrospective application." The Court held that the "Supreme Court would not have vacated earlier judgment in this case and remanded it here for further consideration in light of Payton if there had been no intention on its part that Payton be applied to this case." (Busch vs Florida, 392 So. 2d 272.)

Denial of certiorari in Busch has two immediate results: a) it makes the retrospective application of Payton the final law in Florida; and b) it creates a conflict between the States on a matter of constitutional law.

This conflict gives rise to a choice of law problems of constitutional dimension in this case. Petitioner's arrest and the ensuing search of his room were conducted in Florida by a combined force of New York and Florida police. Since the arrest was illegal in Florida, it should be declared illegal wherever petitioner may have been tried.

Any other rule leads to the anomaly that one state may authorize illegal conduct in another state, so long as the trial is held in the authorizing state. Among other things, such a rule violates the Full Faith and Credit Clause.

Denial of certiorari in Busch, when coupled with this and similar cases, creates a division among the states as to the

application of a constitutional principle. The issue is not solely of interest to petitioner but involves a general problem in which the application of the United States Constitution is not now uniform.

It is respectfully submitted that this division among the states is a further circumstance warranting granting certiorari herein; as is the reasoning of the Florida Court, if it accurately reflects this Court's intention in remanding this and related cases.

Respectfully submitted,

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